tantamount to a declaration by the court that the burden was upon the plaintiffs to show that the land claimed by them was a part of the excepted lands.

A different statement of the law would contravene the established doctrine that a plaintiff in ejectment "must always, in the first instance, make out a clear and substantial possessory title to the particular land in controversy; for possession is always *prima facie* evidence of title, and the party in possession cannot be deprived of his possession by any person but the rightful owner, who has the right to the possession." *Reusens* v. *Lawson,* 91 Va. 226, 254, 21 S. E. 347, 356; Code 1887, sec. 2735.

This may be a very inconvenient rule for plaintiffs in actions of ejectment, but the logic of it is inexorable. They (the plaintiffs) are the actors, and maintain that the defendants are in possession of their land. It involves no hardship, therefore, to require them to make good that assertion by proof, as a condition precedent to a right of recovery.

There are other assignments of error, but it is believed they are practically controlled by the decision of the questions already disposed of, or, at least, are not likely to arise on a future trial of the case. A detailed discussion of them is for that reason unnecessary.

It follows from what has been said that the judgment of the Circuit Court of Wise county must be reversed, and the case remanded for a new trial to be had therein, not in conflict with this opinion.

Reversed.

GEIL v. GEIL.*

Supreme Court of Appeals: At Stauntor.

September 17, 1903.

1. DEEDS—*Acknowledgments of married women—Sufficiency of certificate.*—It is not necessary that the certificate of acknowledgment of a married woman to a deed shall conform to the exact words of the statute, or that the several requisites mentioned in the statute shall be stated in the certificate in the order given in the statute. A substantial compliance with the statute is all that is required. The chief object of the statute was to protect married women from the imposition and coercion of their husbands, and when this appears to have been accomplished, minor defects and omissions will be disregarded.

* Reported by M. P. Burks, State Reporter.

2. DEEDS—*Acknowledgment of married women—Certificate.* A certificate of acknowledgment of a married woman which shows that the writing was fully explained to her, that she was examined by the officer privily and apart from her husband, and that she "declared that she had willingly executed the same and does not wish to retract it" sufficiently shows that she acknowledged the execution of the paper to be her act. *Hockman* v. *McClanahan*, 87 Va. 33, and *Clinch River Veneer Co.* v. *Kurth*, 90 Va. 737, *overruled.*

Appeal from a decree of the Circuit Court of Rockingham county, pronounced October 29, 1902, in a suit in chancery wherein the appellant was the complainant, and the appellee was the defendant.

Reversed.

The opinion states the case.

Sipe & Harris and *J. B. Stephenson,* for the appellant.

Winfield Liggett, for the appellee.

HARRISON, J., delivered the opinion of the court.

The first question to be determined in this case is raised by the cross-appeal, and involves the sufficiency of the acknowledgment of Rebecca Geil to the deed dated September 29, 1871, from Henry Geil and wife to Jacob Geil. So far as necessary to be stated, the language of that certificate is as follows:

"We do further certify that Rebecca Geil, wife of Henry Geil, whose name is likewise signed to the writing hereto annexed bearing date as aforesaid, also personally appeared before us in our said county, and having the writing aforesaid fully explained to her, and being examined by us privily and apart from her said husband, she, the said Rebecca Geil, declared that she had willingly executed the same and does not wish to retract it."

The statute by which the sufficiency of this acknowledgment must be tested is found in Code 1873, p. 906, c. 117, sec. 4. It directs that the certificate of the justices must show that the married woman personally appeared before them; that she was examined privily and apart from her husband, and had the writing fully explained to her; that she acknowledged it to be her act and deed, and declared hat she had willingly executed the same, and did not wish to retract it.

It is the poli y of the law to uphold certificates of acknowledgment. Clerical defects or omissions and obvious technical errors

will be disregarded if the law has been reasonably and fairly complied with. Such certificates should be liberally construed if the substance be found; the great object being to protect the married woman from imposition and coercion by her husband. It is generally held, and often by this court, that in the acknowledgment of a deed by a married woman it is sufficient if it appears that the statute has been substantially observed and followed. A literal compliance is not demanded or expected. As was said by Judge Moncure in *Grove* v. *Zumbro, infra,* "to demand a literal compliance with them would be unnecessarily to obstruct the alienation of property and throw a cloud over titles." Devlin on Deeds, sec. 571; *Langhorne* v. *Hobson,* 4 Leigh, 224; *Hairston* v. *Randolphs,* 12 Leigh, 445; *Grove* v. *Zumbro,* 14 Gratt. 501; *Bolling* v. *Teel,* 76 Va. 496; *Dundas* v. *Hitchcock,* 12 How. 256, 13 L. Ed. 978; *Deery* v. *Cray,* 5 Wall. 795, 18 L. Ed. 653.

We are of opinion that the certificate under consideration substantially complies with the law; that its prime object has been accomplished, and the wife fully protected from imposition or coercion by the husband, so far as the justices could accomplish that end in taking the acknowledgment.

The first objection urged to the certificate is that it fails to show that the explanation of the deed was made to the wife privily and apart from her husband. It is not denied that the wife was privily examined by the officers, and that the certificate clearly shows that fact, but the contention is that, because the declaration "that the deed was fully explained to her," precedes in order of statement the declaration "that she was examined privily and apart from her husband," therefore it does not appear that the deed was explained while the wife was apart from her husband. Conceding, for the purposes of this case, merely, that the explanation of the deed by the justices is one of the things that must be done without the presence of the husband, we think the objection technical and unsubstantial. The certificate declares in the language of the statute that the wife appeared before the functionaries, had the writing fully explained to her, and was examined privily and apart from her husband, and declared that she had willingly executed the deed and did not wish to retract it. The order in which these several requisites are stated in the certificate is immaterial. The law has been substantially complied with when the certificate shows that all of its requisites have been substantially met. If the statement that the wife had

been examined privily and apart from her husband had been at the foot of the certificate, it would have been as effectual as it would have been if that statement had appeared first. The justices having certified that the deed was explained to the wife, and the privy examination had, the presumption is that it was done in the manner contemplated by the statute.

The second objection to the certificate is that it does not appear that the wife acknowledged the deed to be her act. It is true that the certificate does not contain the words, "and acknowledged the same to be her act," but it declares that she willingly executed the deed and does not wish to retract it.

We concur in the view expressed by a learned author that it is difficult to comprehend how a married woman can declare that she has willingly executed a deed and does not wish to retract it without thereby in substance and effect acknowledging the deed to be her act. Burks' Separate Estate of Married Women, p. 2.

Judge Allen, in *Hairston* v. *Randolphs,* 12 Leigh, 445, says, "The certificate must in some form show that she acknowledged the deed." We are of opinion that when the wife, apart from her husband, declares that she has willingly executed a deed and does not wish to retract it, she in substance and effect acknowledges the deed to be her act, and the law is substantially complied with. We are aware that this conclusion is in conflict with the cases of *Hockman* v. *McClanahan,* 87 Va. 33, 12 S. E. 230, and *Clinch River Veneer Company* v. *Kurth,* 90 Va. 737, 19 S. E. 878, where it is held that the omission from the certificate of the words, "and acknowledged the same to be her act," was fatal, and vitiated the conveyance. We regard the conclusion reached in these cases as technical, not warranted by the law as established prior thereto, and calculated to disturb property rights. There being no rule of property established by these decisions, we feel less hesitation in overruling them and returning to the more liberal rule of construction established by this court prior to the decisions mentioned.

In this view of the case it is unnecessary to pass upon other questions presented by the record before us.

For these reasons the decree appealed from must be reversed, and the cause remanded for further proceedings not in conflict with this opinion. *Reversed.*

EDITORIAL NOTE.—We cannot withhold a word of commendation of this judgment. It is so clearly in accord with what the policy of the law should be—the

dispersing of purely technical shadows, if the substance be present—the discouragement of attempts to upset assurances of long-vested land titles for speculative defects—that all must rejoice at this resolution of the question, involving, as it did, the overruling of two prior Virginia decisions. The court met the issue squarely and gave judgment for the very right and reason of the cause.

HERRING v. CHESAPEAKE & WESTERN RAILROAD COMPANY, AND OTHERS.*

Supreme Court of Appeals: At Staunton.

September 17, 1903.

1. APPEAL AND ERROR—*Amount in controversy—Interest.* Where the only ground of jurisdiction of this court is the pecuniary amount involved, and it is clear that if the party is entitled to recover at all he is entitled to recover interest on the amount claimed from the time his demand was asserted, and there has been a decree denying the whole claim, such interest, up to the date of the decree appealed from, is to be taken into account in ascertaining the jurisdiction of this court.
2. COMMON CARRIERS—*Delay in transportation—Case in judgment.* The evidence in this cause fails to show that the injury to appellant's stock here complained of was occasioned by delay in transportation; but if it was, a part of the delay was uncontrollable, and the greater part of it was the result of appellant's own choice.
3. COMMON CARRIERS—*Delay in transportation—Subsequent storm—Act of God—Proximate cause.* A common carrier, though guilty of negligent delay in transporting stock, is not liable for injury thereto inflicted by severe weather which overtook them in transit in consequence of the delay. The severe weather and not the delay is the proximate cause of the injury, and to this cause only does the law look. Severe weather is an act of God for the consequences of which a common carrier is not liable.

Appeal from a decree of the Circuit Court of Rockingham county, pronounced April 18, 1901, in a suit in chancery wherein the Chesapeake & Western Railroad Company was the complainant, and the appellant and others were the defendants. *Affirmed.*

The opinion states the case.

Herring & Herring and *George G. Grattan,* for the appellant.

T. N. Haas and *Sipe & Harris,* for the appellees.

* Reported by M. P. Burks, State Reporter.